

Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of	)	
	)	
Implementation of Section 224 of the Act	)	WC Docket No. 07-245
	)	
A National Broadband Plan for Our Future	)	GN Docket No. 09-51

COMMENTS OF BOB MATTER CONSULTING

Pursuant to the Order and Further Notice of Proposed Rulemaking seeking comment on possible changes to the Commission's regulatory framework governing pole access, Bob Matter Consulting hereby offers comments. Backed by over 20 years experience with pole rental matters in the incumbent LEC industry, Bob Matter Consulting is offering consulting services to both pole owners and pole renters, with emphasis on economics of just and reasonable rental rates.

The opportunity to comment on this highly important issue is appreciated. Today's regulatory policy makes little sense when providers pay vastly different amounts for space. Harmonizing the rental policy through the common thread of broadband is needed and welcomed.

### EXECUTIVE SUMMARY

The total exclusion of capital costs in the Lower Bound method creates a peculiar structure of cost definition, in that the cable rate would include capital costs while the broadband rate would not. Perhaps a revisiting of the telecom formula's two-thirds percentage would provide a compromise solution, whereby at least some of the capital costs would be included. If municipalities and cooperatives are exempt from this effort, the goal of increased deployment cannot be fully attained.

Incumbent LECs need access rights granted by law.

### FULL DISCUSSION (in order of NPRM paragraph number)

#### Previous Proposals (120)

Comment was sought whether previous proposals of AT&T/Verizon and US Telecom reconcile with Section 224. The AT&T/Verizon proposal directly reconciles with the rate formulas of Section 224 in that the only change is the number of presumed attachers (using four, versus three rural and five urban). US Telecom's proposal of an 11% share indirectly reconciled to Section 224 but using a somewhat more complicated path that reasonably updated the cable rate assumptions. The US Telecom proposal was a reasonable interim step to address the outdated and unreasonable pole attachment rate regime. However, it is more appropriate now to address comprehensive attachment rate reform as proposed in the National Broadband Plan.

Capital Costs - Lower Bound Rate (135/136)

Because it contains all five expense elements (maintenance, administration, depreciation, return, tax), the Upper Bound rate is business-as-usual. The case for a Lower Bound rate excluding capital costs (depreciation, return, and tax) is intriguing. Because utilities often set tall poles without regard to the presence of an attacher, I have made the argument in negotiations and testimony that the attacher causes no additional capital investment (other than make ready for which it pays). In supporting this position, I have recently witnessed some utilities altogether stop setting 35' poles, instead setting only 40' and taller, whether or not a renter will be present. Note the attached photo (with apologies for poor scan quality), showing a commonplace situation where the height of the pole set by the utility was not influenced by whether the line was jointly used by the utility and an attacher (right side of road) or solely used by the utility only (left side of road). So the Commission's underlying premise to exclude capital costs makes some initial sense, in that oftentimes the pole owner would have built that pole anyway, and therefore incurs no additional capital costs. However total exclusion of the capital costs for rate setting purposes where the renter pays none of those costs whatsoever would appear extreme, especially knowing capital costs represent about 75% of costs under current formulas (see attachment).

This Lower Bound –No Capital Cost exercise may be a means to an end to create a low rate, but is difficult to theoretically reconcile. Assuming the cable rate continues



for pure cable providers (non-broadband), adopting a broadband rate without capital leaves a quizzical result where pure cable providers pay capital costs while broadband providers do not, based on the apparent belief of that 224(d) and (e) are incongruous in their definition of cost. I offer an alternative approach below (142).

I agree in 137 that taxes are a capital cost, as income taxes are a byproduct of the return on capital, and property taxes are a byproduct of capital ownership.

Non Capital Costs – Maintenance and Administration (138)

The Commission's premise appears supportive of paying for maintenance and administration, assuming the renter is a cost causer, and seeks comment about the use of averages for these elements. I offer no direct comment about the use of averages for either. I would agree that the attacher causes administration expense, but whether the attacher causes maintenance expense is debatable, given that much of it represents tree trimming. Anyone who has watched a tree trimming crew can testify that nearly 100% of the crew's time is spent around the spread-out power lines, with only fleeting moments spent in the small communication space. Surely for safety reasons the trimming crew needs to exercise extreme care when working around energized circuits. While it is true that the attacher derives a small benefit from clearing limbs that might become storm debris that could touch their cable, tree trimming expense is primarily to keep the power lines clear.

Are there other rate solutions? (142)

In the comments above, I criticize the elimination of capital costs as extreme, but yet am sympathetic to the point that the attacher may not have caused the cost. I go on to caution that renters could be overpaying for tree trimming. Perhaps a revisiting of the two-thirds provision in the telecom rate would yield an alternative workable solution. An effort to craft a percentage of cost that the owner must bear alone (one-half?) would address my criticisms, by relieving the renters of some but not all of the costs. Just as how the two-thirds principle functions today, the owner shoulders a greater burden, while the renter is relieved of one-third of the cost of non-usable space. In that kind of mechanism, middle ground is attained, acting as a discount, not a free pass that elimination of capital cost provides. It would take an act of Congress to implement a unique percentage for broadband, but it seems we should head toward legislation anyway. Given that the large majority of contacts today provide broadband, a rental rate this pervasive in the market will draw challenges for years if not grounded in statute. Believing certainty over deploying capital is vital to increased investment (i.e., cable's school district example), the broadband rate ought to be codified and not left to interpretation of present Section 224.

Incumbent LEC Provisions (143)

Knowing the intent of the National Broadband Plan is to treat all providers similarly, I am concerned by the Commission's statement in 143 "we do not propose specific rules in this Further Notice that would alter the Commission's current approach to

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the regulation of pole attachments by incumbent LEC's." As the statement could be taken out of context, I would like to see the Commission comment and clarify that incumbent LEC broadband attachments will be given equal treatment consistently with competitors.

#### Deployment (144)

Seeking comment on the relationship between incumbent LEC rents and deployment (144), concerns have been raised over rural deployment, yet the changes discussed here do not apply to cooperatives and municipalities, who are the dominant pole providers in rural America. The Commission's deployment objective will not be met without reform in this segment.

#### Access Rights (145)

Seeking comment on the relationship between incumbent LEC rents and access rights by virtue of utility agreements (145), present access rights of the incumbent LEC are tenuous. When parties to utility agreements are not at odds, then there is little practical issue to incumbent LEC access rights because the LEC is able to attach to most utility poles. But when the utility chooses to take away those rights due to any dispute within the agreement, the lack of legal recourse to an incumbent LEC is devastating. Case in point, a situation in Florida arose recently where in response to the incumbent LEC's rental rate complaint, the utility canceled the agreement and began invoking a process whereby the incumbent LEC was asked to remove over 50,000 contacts. Having millions of dollars invested in its aerial cables but having



no access rights granted by law, once the agreement was canceled, the incumbent LEC was left completely at the mercy of the utility. As is the case in most states, Florida law offered no access protection and there was no recourse with the PUC (147). Had access rights been granted by law, the incumbent LEC would at least have had a greater ability to negotiate. In summary, the incumbent LEC needs to have access rights established in law to avoid this situation, as access rights established via agreements can be taken away. Incumbent LECs have few remedies at their disposal when disputes arise.

#### Terms and Conditions (145)

As to the argument that incumbent LEC's enjoy favorable terms and conditions by virtue of their joint-use agreements (also 145), this argument is highly misleading. Indeed some fees are waived – for example, parties to a joint-use agreement seldom pay attachment application fees. But this is largely a reciprocal issue, because for every advantage gained by the incumbent LEC by avoiding the application fee, the advantage is lost when the utility in turn pays no application fee when it attaches to an incumbent LEC pole. The real monetary issue under the heading of 'terms and conditions' is make-ready costs, and incumbent LECs customarily and routinely pay these costs just as cable and telecom attachers do, often exceeding \$1000 per pole. Incumbent LEC agreement terms are not generally favorable, and they impose additional obligations on them, as well. Even if it were true that incumbent LEC agreement terms were favorable, however, that so-called 'advantage' certainly would not be worth paying multiple times the rent.

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Same Rate? (146)

Paragraph 146 asks "Should the rate be the same as other attachers pay?" Simply put, the answer would be "yes", otherwise it would not be faithful to the premise of the National Broadband Plan that rates be uniform. To the extent that an incumbent LEC has multiple cables attached (i.e., using 2 or 3 feet and not just one), the rate can be adjusted accordingly with the additional usage.

Respectfully submitted,



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Incumbent LEC Pole Attachment Rates, Based on ARMIS Data  
(showing capital costs range from 66% to 85% of total cost)

All Costs	VZ - NY		VZ - PA		AT&T - CA		AT&T - FL		AT&T - IL		AT&T - TX		Qwest - CO		Qwest - WA	
Cable	\$	4.58	\$	2.16	\$	5.43	\$	4.92	\$	1.80	\$	2.16	\$	1.58	\$	2.48
Telecom Urban (5)	\$	6.92	\$	3.26	\$	8.21	\$	7.44	\$	2.72	\$	3.26	\$	2.39	\$	3.75
Telecom Non-Urban (3)	\$	10.43	\$	4.92	\$	12.39	\$	11.22	\$	4.11	\$	4.92	\$	3.60	\$	5.65
No Capital Costs																
Cable	\$	1.13	\$	0.32	\$	1.63	\$	1.34	\$	0.34	\$	0.62	\$	0.54	\$	0.44
Telecom Urban (5)	\$	1.71	\$	0.49	\$	2.47	\$	2.03	\$	0.51	\$	0.94	\$	0.82	\$	0.66
Telecom Non-Urban (3)	\$	2.58	\$	0.74	\$	3.72	\$	3.06	\$	0.77	\$	1.41	\$	1.24	\$	0.99
Capital Costs Only																
Cable	\$	3.45	\$	1.84	\$	3.80	\$	3.58	\$	1.46	\$	1.54	\$	1.04	\$	2.04
Telecom Urban (5)	\$	5.21	\$	2.77	\$	5.74	\$	5.41	\$	2.21	\$	2.32	\$	1.57	\$	3.09
Telecom Non-Urban (3)	\$	7.85	\$	4.18	\$	8.67	\$	8.16	\$	3.34	\$	3.51	\$	2.36	\$	4.66
Pct Capital Costs																
Cable		75%		85%		70%		73%		81%		71%		66%		82%
Telecom Urban (5)		75%		85%		70%		73%		81%		71%		66%		82%
Telecom Non-Urban (3)		75%		85%		70%		73%		81%		71%		66%		82%

Utility Pole Attachment Rates, Based on FERC Data  
(showing capital costs range from 63% to 82% of total cost)

All Costs	Gulf Pwr	AL Pwr	GA Pwr	Tampa Ele	Jersey Ctrl	Metro Edison	Penn Electric	NSTAR
Cable	\$ 6.31	\$ 8.00	\$ 6.32	\$ 8.24	\$ 8.21	\$ 8.69	\$ 8.01	\$ 6.90
Telecom Urban (5)	\$ 9.54	\$ 12.09	\$ 9.56	\$ 12.46	\$ 12.41	\$ 13.13	\$ 12.11	\$ 10.43
Telecom Non-Urban (3)	\$ 14.38	\$ 18.23	\$ 14.42	\$ 18.79	\$ 18.71	\$ 19.81	\$ 18.26	\$ 15.75
No Capital Costs								
Cable	\$ 1.89	\$ 2.86	\$ 2.33	\$ 2.14	\$ 2.18	\$ 2.41	\$ 1.26	\$ 1.92
Telecom Urban (5)	\$ 2.85	\$ 4.32	\$ 3.52	\$ 3.23	\$ 3.29	\$ 3.64	\$ 1.90	\$ 2.90
Telecom Non-Urban (3)	\$ 4.29	\$ 6.52	\$ 5.31	\$ 4.87	\$ 4.96	\$ 5.50	\$ 2.86	\$ 4.37
Capital Costs Only								
Cable	\$ 4.42	\$ 5.14	\$ 3.99	\$ 6.10	\$ 6.03	\$ 6.28	\$ 6.75	\$ 4.98
Telecom Urban (5)	\$ 6.69	\$ 7.77	\$ 6.04	\$ 9.23	\$ 9.12	\$ 9.49	\$ 10.21	\$ 7.53
Telecom Non-Urban (3)	\$ 10.09	\$ 11.71	\$ 9.11	\$ 13.92	\$ 13.75	\$ 14.31	\$ 15.40	\$ 11.38
Pct Capital Costs								
Cable	70%	64%	63%	74%	73%	72%	84%	72%
Telecom Urban (5)	70%	64%	63%	74%	73%	72%	84%	72%
Telecom Non-Urban (3)	70%	64%	63%	74%	73%	72%	84%	72%